

# UPDATE UPDATE

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# GSD

The quarterly newsletter of the General Services Division

Summer 2004

Montana Department of Administration • Website address: <http://www.discoveringmontana.com/doa/gsd>

## PROCUREMENT NEWS AND NOTES

**FYE – Thanks!** Thanks to all agencies for getting projects to us in a timely manner to ensure completion by fiscal year end. In the past we have asked that all FYE requisitions be submitted by May 1. Next year we will be asking that all FYE requisitions for bids be submitted by May 1, however, we will require requisitions for RFP's to be submitted by April 1 due to the much longer turnaround time required.

**More Prevailing Wage Issues.** The State Procurement Bureau recently submitted a couple of prevailing wage questions to the Labor Standards Bureau of the Department of Labor and Industry (DLI). Both questions concerned the contract for food services for MSU (Billings). First, the contract is what is termed a "revenue generating" contract in that the contractor's revenue is generated from student food service fees, catering services, and cash sales. The contractor hires and pays staff, buys food, etc., and pays for the associated costs from the revenue that is generated. Our question to DLI was whether this contract would be considered a "public works" contract in excess of \$25,000, to which the prevailing wage statutes would apply. DLI's answer was yes since the student food service fees, which are not exempted as public monies, would be in excess of \$25,000. The second question submitted was whether individuals employed under a work-study grant were exempt from being paid prevailing wages. DLI's answer was that these individuals must be paid the appropriate prevailing wage rate for the craft they perform work in. In this instance, the rate would be for a food service worker. These questions and answers will be added to the SPB resource document concerning prevailing wages that is available on-line on the GSD website at <http://www.discoveringmontana.com/doa/gsd/css/Resources/ProcurementQandA.asp>.

**2005 Legislation.** We are in the final stages of drafting a bill to amend the Montana Procurement Act in several places. Anyone interested in seeing a draft of that bill, please contact Sheryl Olson at 444-3315 or at [sherylolson@state.mt.us](mailto:sherylolson@state.mt.us). All comments and suggestions are welcome!

**Procurement Training Opportunities.** Penny Moon, SPB Contracts Officer, will be offering the following classes over the next few months. Contact the Professional Development Center at 444-3985 or e-mail [pdco1@state.mt.us](mailto:pdco1@state.mt.us) for registration and cost information.

**Basic Purchasing – September 15 and 30, 2004 and March 24 and 31, 2005.** This class covers procurement ethics, resources, levels of authority and delegation. It also covers the procurement tools used for small purchases, limited solicitation, sole source and sole brand, and term contracts.

**Advanced Purchasing – October 7, 2004 and April 7, 2005.** This class covers building, writing, opening and awarding Requests for Proposals, Invitations for Bids, and Requests for Information. It focuses on advanced procurement issues such as leasing versus buying, public access, protests, grants, and ethics.

**Initiating and Navigating the RFP Process – October 28, 2004 and April 21, 2005.** An in-depth, step-by-step look at the RFP document, process, and some do's and don'ts. It will also include some exercises on writing the scope of work and evaluation criteria.

**New Faces at MSU and DEQ.** Please join us in welcoming two new procurement officers to our ranks. Shawna Lanphear began her employment as the Purchasing Director at MSU (Bozeman) on April 26. Shawna is a Bozeman native who graduated from MSU in Business Management and then obtained a law degree from the California Western School of Law in San Diego. Shawna views her new position as an opportunity to apply her experience to a new setting in higher education.

Judi May came on board the Department of Environmental Quality in Helena as the Chief Contracts Officer on May 17. Judi was previously employed by the Salt River Project, a large utility company in the Phoenix area. Judi has over 12 years experience in Supply Chain Management and possesses a Master's degree in Organizational Management and a BS in Business Management.

## FOR YOUR INFORMATION

**Lesson Learned.** The Department of Labor and Industry recently determined that the Department of Administration was responsible for the payment of approximately \$4,400 in back wages to workers on contract for the Montana Lottery. The contract was awarded in 1998 through an RFP process for the implementation and operation of an on-line gaming system. The contract involved, among other things, the "associated services" relating to the on-line gaming system. A later amendment to the contract outlined an agreement between the contractor and the State regarding the maintenance and repair of the central system and communication network hardware.

State law (section 18-2-401, MCA) requires the payment of prevailing wages for 12 categories of "non-construction services," including the "appliance and office machine repair and servicing" category that was the subject of this claim. Although the Lottery contract contained a requirement that applicable prevailing wages must be paid by the contractor, it did not specify the applicable profession or the current specific prevailing wage rate for that profession as required by section 18-2-422, MCA. In this case, the Department of Labor and Industry determined that the contractor's field service technicians who serviced the gaming machines were entitled to prevailing wages because they were providing services on a "public works" contract.

In the end, the "public contracting agency" was responsible for the payment of the additional wages due. Hence, the Montana Lottery paid a total of \$4,400 in wage claims to several of the contractor's workers.

The lesson for agencies and contracts officers is this: Dig deep inside the proposed scope of work of any project and look for any remote possibility of a "non-construction" service lurking in the depths of the project. If there is even a hint of possibility that one of the "non-construction" services listed in section 18-2-401, MCA, could be involved, list that profession and its current prevailing wage rate in the solicitation document and in the contract. In addition, keep in mind that the lack of a regular rate or interim rate does not excuse an agency from paying the prevailing wage rates. In fact, ARM 24.17.124 provides for setting of interim rates for occupations not currently included in state prevailing wage rate publications. The Department of Labor and Industry's administrative rules concerning prevailing wage rates for public works contracts are available at the following website

address:

<http://erd.dli.state.mt.us/laborstandard/documents/pwrules.pdf>. Be sure to watch any contract amendments that later get added to a contract to be sure that a "non-construction" service is not now involved in the project.

For assistance in knowing when and how to apply prevailing wage requirements, contact the Department of Labor and Industry at 444-5600 or at their website at <http://erd.dli.state.mt.us/laborstandard/wagehrlaws.asp>. In addition, the General Services Administration's website has a Question and Answer document on applying prevailing wage requirements that has been jointly prepared by the DLI and DOA. That document, which is updated on a regular basis, can be found at: <http://discoveringmontana.com/doa/gsd/css/Resources/ProcurementQandA.asp>.

## FACILITIES MANAGEMENT NEWS AND NOTES

**In an Emergency.** For any emergency or incident occurring at a state agency on the Capitol Complex, remember four things: (1) call 911; (2) call Capitol Security at 444-3060; (3) look for instruction from your agency's Employee Safety Unit; and (4) move away from the scene as quickly as possible to make room for the emergency responders and GSD staff. For more information, contact Lou Antonick at 444-1462.

**Employee Safety Units.** The General Services Division is in the process of assisting agencies in developing employee safety units in each of the buildings on the Capitol Complex. The formation of these units is part of the Continuity of Government plan currently under development by the Department of Administration and is also part of our on-going responsibility to respond to any emergency or incident on the Capitol Complex. For more information contact Lou Antonick at 444-1462 or Elaine Lopes at 444-0145.

**10<sup>th</sup> Anniversary.** The "State of Montana Integrated Solid Waste Management Plan" became effective July 1, 1994. It set long-term goals, assessed alternative strategies, and made recommendations to prepare and implement a solid waste plan by requiring those managing solid waste to implement source reduction, reuse, recycle and compost prior to disposal or incineration.

Thus, began the program known as the **three R's: Reduce, Reuse and Recycle**. The "Plan" is currently being updated and modified by a Department of Environmental Quality task force and will be available for public comment later this summer. The bottom line – you, as a State of Montana employee, are required by law to Reduce, Reuse and Recycle.

## PRINT AND MAIL SERVICES NEWS AND NOTES

**New Envelope Term Contract.** Print and Mail Services' new vendor for the Envelope Term Contract for FY05 is Master Touch of Spokane, Washington. This is an exclusive contract for any envelope order that fits the parameters of the contract, which are essentially the same as in previous years. The contract TC171-05C is available on the GSD website at the following link:

<http://www.discoveringmontana.com/doa/gsd/css/Resources/TermContracts.asp>.

**NEW MAIL SERVICE.** Print and Mail Services has instituted a new process that allows it to mail warrants from the Department of Administration's (DOA) accounting system on a permit basis. Warrants that are available from DOA in the morning no longer require the postage to be metered on each warrant. This change, which saves the agency three cents per piece, went into effect in May. It has allowed Mail Services to process more of the mail in the morning thereby alleviating the higher volume in the afternoon. The cost for mailing these warrants went from \$.358 per warrant to \$.328 per warrant. Print and Mail Services estimates that this new process is saving the State approximately \$64,400 per year.

## ON THE LEGAL FRONT

In 1995 the Department of Corrections issued an RFP seeking a company to operate a pre-release center. After a firestorm of controversy over the proposed site in the Helena valley, the Corrections Director stopped the siting process and temporarily abandoned any attempts to locate a pre-release center in the area. His decision was accepted by the highest scoring offeror, but a property owner who had hoped to sell her property for the pre-release center did not agree. She filed a lawsuit against the State on the basis of "tortious interference with contract." What ensued was a nine-year legal battle that culminated in a week-long jury trial in Bozeman in June of 2004. The jury found that the State had not interfered with the buy-sell agreement between the property owner and the company selected to operate a pre-release center and awarded no damages to the plaintiff.

The plaintiff's main argument throughout the legal proceedings was that the State was required by section 18-4-304, MCA, to award a contract to the highest scoring offeror and to not consider public

sentiment in siting a pre-release center once the highest scoring offeror had been determined.

In contrast, the State argued that while the State has every intention of awarding a contract after issuing a solicitation, it also retains the right to cancel a solicitation if it is in the best interest of the State. In addition, the State argued that the Montana Constitution and section 2-3-103, MCA, also guarantee the public the right to notice and opportunity to be heard in actions that are deemed to be of "significant interest" to the public, including the awarding of a contract.

This was a very important case for the State to win because of the potential precedent that a different outcome could have had on public procurement.

## SURPLUS PROPERTY NEWS AND NOTES

The Property and Supply Bureau held its Spring equipment and vehicle auction on Saturday, May 22, 2004. The auction attracted over 600 bidders from six states for the one-day sale. Over \$685,000 will be returned to the participating agencies as a result of this highly successful sale.

## TERM CONTRACT/RTS UPDATES

**New Term Contract for Firm Natural Gas.** Effective July 1, 2004, Jefferson Energy Trading, LLC (Jetco) of Butte will take over as the new supplier for the exclusive term contract for firm natural gas at a price of \$5.85 per dekatherm for facilities with a firm storage assignment on NorthWestern's pipeline, or \$6.05 per dekatherm for facilities without firm storage service. The contract is in effect through June 30, 2005.

The award reflects a staggering 85 percent average increase over the previous contract, as market conditions have changed drastically since the last contract was awarded in October 2002.

Presently, 27 state facilities, 22 school districts and four municipalities comprise the 1.3 million annual dekatherm (dkt) load under the state contract, making us the fourth largest customer of the 230 customers that ship their own gas on the NorthWestern Energy pipeline system.

**Duplicating Supplies, SPB04-850D.** The portion of the duplicating supplies term contract for Groups 2, and 5 through 15, has been cancelled effective July 1, 2004, because the vendor had been supplying inks that

*Continued on Page 4*

## QUESTION OF THE QUARTER

***"When we contract with universities outside of Montana for services, i.e., research projects, surveys, etc., do we need to seek competition through a limited solicitation process or a competitive bid or proposal?"***

According to section 18-4-132, MCA, [The Montana Procurement Act] does not apply to either grants or contracts between the state and its political subdivisions **or other governments**, except as provided in part 4 (emphasis added). That statement implies that the Montana Procurement Act does not apply to contracts with other states. Although "governments" is not defined in Title 18, chapter 4, MCA, we think a good argument could be made that it means governments other than the State of Montana. Therefore, it's our opinion that contracts between the State of Montana and "public" universities outside of Montana are exempt from the Montana Procurement Act and may be accomplished through an agreement without seeking competition.

## TC/RTS UPDATES, Cont.

*Continued from Page 3*

were petroleum based contrary to the specifications of the contract. A replacement invitation for bid (SPB05-975J) was issued on June 9, 2004. A new contract for these groups is expected to be in place by July 1. The new contract will be posted as soon as available on the GSD website under term contracts. Agencies will be notified of contract award through the Purchasing List Serve. Please direct any questions to Jeanne Wolf at 444-7210 or [jwolf@state.mt.us](mailto:jwolf@state.mt.us).

**Vehicles RTS.** As a reminder, the Requisition Time Schedule for vehicles is September 10th and February 3. Requisitions must be received at the State Procurement Bureau by these dates or vehicles cannot be purchased except in an emergency situation only. The Fall call includes cars, trucks and police pursuit vehicles. The Spring call includes cars and trucks only. Please contact Rhonda Grandy at 444-3320 or [rgrandy@state.mt.us](mailto:rgrandy@state.mt.us) with questions.

**Mercury Lamp Recycling Term Contract.** The new term contract for Mercury Containing Lamp Recycling is available on the GSD website. The new contractor is ONYX Environmental Services,

North Salt Lake City, Utah. The contract will begin on July 1, 2004. and runs through June 30, 2005. Please contact Rhonda Grandy with any questions.

**Other Term Contract Updates.** A new contract for Alcohol, SBP05-996P, was issued and will take effect July 1, 2004. A new term contract for Field Drug Testing Kits and Laboratory Services will be issued as soon as the contract is signed and insurance certificates are received.

In addition, new term contracts will be issued in the next few months for Environmental Services, Montana Wetlands Legacy Projects, and Temporary Services. If anyone has suggestions for additional service categories or other changes for the Temporary Services term contract, please contact Penny at 444-3313 or [pmoon@state.mt.us](mailto:pmoon@state.mt.us).

## SABHRS PURCHASING MODULE USERS MEETING

There will be a SABHRS Purchasing Module users meeting on Friday, July 30, 2004, 10:30 a.m. to 11:30 a.m., in Room 160, Mitchell Building. Meeting topics will include a recap of the fiscal year-end process, and a review of that important, powerful tool, the Reconciliation Workbench. Please bring your questions or comments to the meeting or if you have any specific topics you would like to have discussed, please contact Bonny Belling, State Procurement Bureau, 444-3322.

## THINK ABOUT IT

***The secret of joy in work is contained in  
one word - excellence. To know how to do  
something well is to enjoy it.***  
**Pearl Buck**

## PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, July 22, 2004, from 1 p.m. to 4 p.m. in the Public Health and Human Services Auditorium, 111 North Sanders in Helena.

## ABOUT THIS NEWSLETTER

"GSD Update" is published quarterly by the General Services Division of the Montana Department of Administration. For more information, or to get on the mailing list, contact us at (406) 444-2575. Our address is: P.O. Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Website address: [www.discoveringmontana.com/doa/gsd](http://www.discoveringmontana.com/doa/gsd).